

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

Mailed
February 18,
2004

Paper No. 11
RFC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Hammerton, Inc.

Serial No. 76214161

K. S. Cornaby of Jones, Waldo, Holbrook & McDonough for
Hammerton, Inc.

D. Beryl Gardner, Trademark Examining Attorney, Law Office
107 (Janice O'Lear, Managing Attorney).

Before Cissel, Bottorff and Drost, Administrative Trademark
Judges.

Opinion by Cissel, Administrative Trademark Judge:

On February 22, 2001, applicant, a Utah corporation,
filed the above-referenced application to register the mark
HAMMERTON on the Principal Register for "retail and
wholesale services by direct solicitation by agents, mail-
order/catalog services, and computerized on-line services,
all featuring lighting, furnishings and accessories in
International Class 35. Manufacture of lighting,

furnishings and accessories in International Class 40."

The basis for filing the application was applicant's claim that it had used in the mark in connection with the specified services in interstate commerce since October 1, 2000.

The Examining Attorney refused registration under Section 2(e)(4) of the Lanham Act, 15 U.S.C. Section 1052(e)(4), on the ground that the mark is primarily merely a surname. Submitted in support of the refusal to register were copies from an on-line directory, ReferenceUSA, formerly known as Phonedisc, listing 112 people whose surname is "Hammerton." The Examining Attorney also held that applicant's recitation of services was unacceptably indefinite, and suggested an acceptable amendment to the recitation.

Applicant responded to the first Office Action with an amendment to the recitation of services and argument against the refusal to register. Applicant amended the recitation of services to read as follows: "Class 35: Retail and wholesale services by direct solicitation by sales agents, mail-order and catalog services, and computerized on-line services, all featuring lighting, furnishings and accessories. Class 40: Manufacture of lighting, furnishings and accessories therefore to order

and/or specification of others." With regard to the refusal to register, applicant conceded that "Hammerton" is a surname, but argued that it should not be considered to be "primarily merely a surname," within the context of the Lanham Act because so few people are named "Hammerton." Applicant contended that the term "Hammer" in its mark "elicits an image in the public eye that has nothing to do with its function as a possible surname, and that "[t]he same may be said of the word 'ton,' as part of the trademark."

The Examining Attorney accepted the amendment to the recitation of services in the application, but maintained and made final the refusal to register under Section 2(e)(4) of the Act. He conceded that the directory evidence shows that "Hammerton" is not a popular surname, but argued that this fact does not preclude a finding that its primary significance is that of a surname. He submitted a dictionary excerpt which reveals no listing or meaning for the term, and concluded that it has no recognizable meaning or significance other than as a surname. He took the position that HAMMERTON, although admittedly a rare surname, nonetheless has the "look and feel" of a surname, citing examples of other surnames such as "Hammerbacher," "Hammerstein," "Hilton" and "Warrenton."

Applicant timely filed a Notice of Appeal. Both applicant and the Examining Attorney filed appeal briefs. Applicant requested an oral hearing before the Board, but subsequently withdrew the request.

Accordingly, we have resolved this appeal based on consideration of the record, the arguments presented in the briefs, the statute and the relevant legal precedents.

Section 2(e)(4) of the Lanham Act precludes registration of a mark which is primarily merely a surname. The issue is what the primary significance of the term is to prospective purchasers of the goods or services specified in the application. In re Kahn & Weisz Jewelry Mfg. Corp., 508 F.2d 831, 184 USPQ 421 (CCPA 1975). Factors to take into consideration are as follows: whether the surname is rare; whether the name is the surname of anyone connected with the applicant; whether the name has any recognized meaning or significance other than as a surname; whether the stylization of the lettering in which the name is presented is distinctive enough to create a commercial impression separate and apart from that of the surname; and whether the name has the "look and feel" of the surname.

Even a relatively uncommon surname is properly refused registration under Section 2(e)(4) of the Act if its

primary significance is that of a surname. See *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985), wherein DARTY was held to be primarily merely a surname; *In re Rebo High Definition Studio, Inc.*, 15 USPQ2d 1314 (TTAB 1990), wherein REBO was held to be primarily merely a surname; and *In re Pohang Iron & Steel Co., Ltd.*, 230 USPQ 79 (TTAB 1986), wherein POSTEN was similarly refused registration under this section of the Lanham Act.

In the case at hand, both applicant and the Examining Attorney agree that HAMMERTON is a surname, albeit a rare one. There is no evidence that "Hammerton" is the surname of anyone connected with the applicant. Notwithstanding applicant's unsupported argument that its mark "is an original, devised mark created by Applicant to identify its business which includes manufacture of metal artifacts showing 'hammered edges,' among other things," there is no evidence that HAMMERTON has any recognized meaning or significance other than that of a surname. The presentation of the mark in the specimens of record, as well as the depiction of the mark in the typed drawing submitted with the application, plainly preclude applicant from arguing that the stylization of the lettering is distinctive enough to create a commercial impression

separate and apart from that of the surname. Lastly, we agree with the Examining Attorney that HAMMERTON has the "look and feel" of a surname.

In short, although "Hammerton" in appears to be a rare surname and there is no evidence that anyone connected with applicant has the surname "Hammerton," this record shows that many people do have the surname "Hammerton" and that the term has no other recognized meaning or significance other than that of a surname. Under these circumstances, we conclude that this record is adequate support for the refusal to register under Section 2(e)(4) of the Lanham Act. Applicant's arguments that it chose the mark because some of its goods have hammered edges and that it has used the mark for three years with the designation "TM" to indicate its trademark significance are not persuasive of applicant's contention that the primary significance of HAMMERTON to purchasers of applicant's services is anything other than that of a surname.

DECISION: The refusal to register under Section 2(e)(4) of the Act is affirmed.